

OPINION 1163

CONUS MOLUCCENSIS (MOLLUSCA: GASTROPODA)
IS AVAILABLE AS FROM THE WORK OF KÜSTER, 1838

RULING.- (1) The request to use the plenary powers to declare the specific name *moluccensis*, as published in the binomen *Conus moluccensis*, available from the work of Dillwyn, 1817, is refused.

(2) The specific name *moluccensis* Küster, 1838, as published in the binomen *Conus moluccensis*, is hereby placed on the Official List of Specific Names in Zoology with the Name Number 2721.

HISTORY OF THE CASE Z.N.(S.)2059

A request for a ruling on whether the name *Conus moluccensis* was made available by Dillwyn, 1817, was first received from Dr W.O. Cernohorsky (*Auckland Institute and Museum, New Zealand*) on 19 December 1973. After an exchange of correspondence, a formal application was received on 14 January 1974, sent to the printer on 14 April 1974, and published on 20 September 1974 in *Bull. zool. Nom.* vol. 31, pp. 156-158. Public notice of the possible use of the plenary powers in the case was given in the same part of the *Bulletin* as well as to the statutory serials and to two malacological serials.

Dr Cernohorsky asked the Commission to vote for one of two alternatives: either (A) for the use of the plenary powers to suppress *C. moluccensis* Dillwyn, 1817 and place *C. moluccensis* Küster, 1838 on the Official List; or (B) to rule that *C. moluccensis* was made available by Dillwyn, 1817, and to so place it on the Official List. Dr Harald Rehder (*U.S. National Museum, Washington, D.C.*) held that the name was not made available by Dillwyn and accordingly supported Alternative A. Dr A.J. Kohn (*University of Washington, Seattle*) supported Alternative B. No other comments were received.

DECISION OF THE COMMISSION

On 14 December 1979 the members of the Commission were invited to vote under the Three-Month Rule on Voting Paper (1979) 22, in Part 1 for or against the use of the plenary powers in the present case, and in Part 2 for or against using those powers to declare *Conus moluccensis* available as from the work of Dillwyn, 1817. The following note accompanied the voting paper.

NOTE TO ACCOMPANY V.P.(79)22

'It seems to me that the first question to be answered is whether Dillwyn made the specific name *moluccensis* available or not. Dr Cernohorsky provided a facsimile of the original work which, I believe, enables this question to be answered quite clearly in the negative. Dillwyn quotes the name from Chemnitz, i.e. Martini, F.H.W. & Chemnitz, J.H., 1769-95, *Neues systematisches Conchylien-Cabinet* (Nürnberg), and the species-group names in that work were ruled to be unavailable in Opinion 184 (*Ops Decls I.C.Z.N.*, vol. 3: 25-36, 1944), so that the specific name *moluccensis* was not available when Dillwyn received it. His index entry is printed in italics which, from Dillwyn's own statement, shows that it was not valid for him. This shows that the citation of Chemnitz's figures is to be read as a bibliographic reference rather than as an indication under Article 16. He says that *C. moluccensis* differs materially from *C. pertusus* Bruguière, but since he does not say how it differs, he gives neither description nor definition; furthermore he does not cite *C. moluccensis* as a synonym of *C. augur*, so that Article 11d does not come into play. These are my reasons for concluding that Dillwyn did not make *Conus moluccensis* available. In fact he cited the name incidentally as a possible instance of a certain method of artificial preparation of shells.

'The Commission can, of course, vote for Alternative B and rule under its plenary powers that *Conus moluccensis* is to be deemed available from Dillwyn's work and is to be interpreted by reference to Chemnitz's description accompanied by two figures of one individual. In my view, however, a vote for Alternative A would not require plenary powers and would be effective on a simple majority. In that case, the name would be attributed (on the basis of the information at present available to the Commission) to Küster, 1838.

'You are therefore invited to vote on the attached Voting Paper, in Part 1, for or against the use of the plenary powers in the present case; and in Part 2, either for or against ruling that *Conus moluccensis* is available as from Dillwyn, 1817. All those who voted *against* in Part 1 will be considered to have voted *against* in Part 2 and for attributing *C. moluccensis* to Küster, 1838. A two-thirds majority of those voting *for* in Part 1 will be needed to give an affirmative answer in Part 2.

'Whatever decision is reached in this issue will be without prejudice to the general question of the conditions under which an unavailable name can be made available by a subsequent author.'

At the close of the voting period on 14 March 1980 the state of the voting was as follows:

Part 1

Affirmative Votes — six (6) received in the following order:
Mroczkowski, Sabrosky, Habe, Dupuis, Nye, Heppell

Negative Votes — eighteen (18) received in the following order: Melville, Holthuis, Bayer, Willink, Vokes, Corliss, Tortonese, Trjapitzin, Alvarado, Brinck, Habe, Welch, Starobogatov, Kraus, Ride, Binder, Halvorsen, Cogger

Part 2

Affirmative Votes — five (5) received in the following order:
Mroczkowski, Sabrosky, Dupuis, Nye, Heppell

Negative Vote — Habe

No voting paper was returned by Bernardi.

The following comments were sent in by members of the Commission with their votes:

Mroczkowski: 'It is clear to me that the citation of Chemnitz's figures in Dillwyn's work is a correct indication under Article 16a(i). Thus Dillwyn made the name *Conus moluccensis* available and is its author.'

Trjapitzin: 'I vote for attributing the name *Conus moluccensis* to Küster, 1838 and agree with Dr Rehder and the note by the Secretary.'

Sabrosky: 'Dillwyn's index shows that *Conus moluccensis* was a name cited in synonymy, and under Article 11d it might have been made available from Dillwyn if the name had been adopted by some later author. Kohn did not know of such use but pointed out that it might have happened (Küster's *moluccensis* was apparently a separate proposal). I agree with Kohn that recognising the name from Dillwyn, 1817, is the safest course.'

Ride: 'I hold that the vote should be taken again under the One-Month Rule. The only way that the Commission could validate the name from Dillwyn is by setting aside the provisions of Article 1. That action would be necessary before a name not applied by its author to a taxonomic unit of animals could be admitted into zoological nomenclature. [The only exceptions are names proposed before 1961 for "conditional" application (implicit in Article 15) and names subsequently made available from earlier publication in synonymy through Article 11d]. The question as to whether Chemnitz recognised the taxon is irrelevant, and Dillwyn does not publish the name in synonymy.'

'A new vote must be called for procedural reasons also. The second vote cannot be restricted to those who vote for the use of the plenary powers. I vote *both* against the use of the plenary powers (as being unnecessary) *and* against the introduction of the name from Dillwyn (for the reasons given).' [In view of the clear cut nature of the Commission's decision, it seems that no useful

purpose would be served by reopening the case. R.V.M.]

Heppell: 'Cernohorsky asked the Commission to rule on the availability of *Conus moluccensis* Dillwyn, 1817. If it were ruled to be not available under the Code (i.e. without the use of the plenary powers) the date and authorship would fall to Küster, 1838. If it were considered available from Dillwyn, the Commission was asked to make that opinion explicit, or to suppress that usage in favour of Küster's. If these alternative proposals had been brought to the vote, my opinion would have been that *C. moluccensis* was available as of Dillwyn, 1817, and that there was no reason to suppress that usage as there was no threat therefrom to stability of nomenclature. Thus I would have voted for Alternative B, and for much the same reasons as Kohn in his comment — i.e. if Dillwyn's name is not available by his exact reference to the Chemnitz figures, then nor are a great many, Röding, 1798, names proposed in exactly the same way and in daily use. I wish Rehder had indicated which were "the several names in Dillwyn that would be validated if these names are ruled available"; after an extensive search through the two volumes I could not find a single example.'

'As the Secretary took an opposite view to the applicant (who had regarded the Dillwyn usage as "probably available") in his note accompanying the voting paper, the choice of Alternative B has been pre-empted and Dillwyn must be deemed by use of the plenary powers to have made the name available. Then so be it. My interpretation of Dillwyn's intentions is as follows. *Conus moluccensis* was (and is) a rare species, known to Dillwyn only through Chemnitz's figures and description. Most of Chemnitz's names had been made available (and reduced to binominal names) by Gmelin, 1791, or Röding, 1798, but volume 11 of the *Conchylien-Cabinet* had come out too late (1795) to be noticed by either of those authors. Consequently Dillwyn was one of the first to catalogue the new species described in that volume. It is misleading of the Secretary to state that the specific name *moluccensis* was not available when Dillwyn received it, as it was no less available then than when Küster received it in 1838 (unless Dillwyn had already made it available before him). Küster attributed the name to Chemnitz, as did Kiener, 1846, *Spéc. Gén. Coq. Viv.*, vol. 2, p. 49) and many subsequent authors who were not to know that this universally used work (with its specific names usually conventionally binomialised) would be ruled unavailable in 1944. As stated by Cernohorsky, Dillwyn did not publish the name in the synonymy of *C. augur*. Not being sure where to place them, he mentioned the two species *C. pertusus* and *C. moluccensis* between *C. augur* and the next species (a) because [Hwass in] Bruguière described *C. pertusus* following *C. augur*, and (b) because he sus-

pected (incorrectly) that both might be based on artificially doctored shells. He might have doubted their validity but he certainly regarded them as available names (not synonyms) and in the case of *C. moluccensis* conferred availability on them by giving a bibliographic reference to the description and figures of Chemnitz (an "indication" for a specific name according to Article 16a(i)).'

ORIGINAL REFERENCE

The following is the original reference to a name placed on the Official List by the ruling given in the present Opinion:

moluccensis, *Conus*, Küster, 1838, *Syst. Conch.-Cabinet von Martini und Chemnitz. Familie der Coneae oder Conidae*, ed 2, vol. 4 (2), pp. 121, 181, pl. 23, figs. 4, 5. Nuremberg.

CERTIFICATE

I hereby certify that the votes cast on V.P.(79)22 were cast as set out above, that the proposal for the use of the plenary powers contained in that voting paper has been duly rejected, and that the decision so taken, being the decision of the International Commission on Zoological Nomenclature, is truly recorded in the present Opinion No. 1163.

R.V. MELVILLE

Secretary

International Commission on Zoological Nomenclature

London

21 April 1980